

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0271P

Sales Tax

Calendar Years 1998 & 1999

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1998 and 1999.

The taxpayer's main activity is that of a retail merchant manufacturing product for sale at wholesale and retail nationally and inter-nationally. The taxpayer's automotive and marine product lines include: gasoline and diesel engines, stern drives, transmissions, transfer cases, differentials, rear axle assemblies, axle housings, and subassemblies. The taxpayer is headquartered in Indiana. The taxpayer has three locations in Indiana. There are no locations out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the errors in the audit are infrequent and immaterial. In 1998, part of the error was due to expansion of operations to a new plant and the purchase of an aircraft engine. In 1999, part of the error was due to the purchase of pallets and labels which may or may not be taxable. In conclusion, the taxpayer argues the error is insignificant as the use tax error is about 1% of the total purchases.

For 1998, the Department points out the expansion of operations to a new plant is not considered an infrequent type of occurrence. The Department does agree the purchase of the aircraft engine is infrequent, but the aircraft engine is only 18% of the total use tax liability.

For 1999, the purchase of pallets and labels was deemed taxable according to the audit report. Furthermore, the total amount of purchase for the pallets and labels were only a small fraction of the total use tax liability.

To continue, the Department finds the use tax error to be material. For each year the use tax error was approximately 50% of the total use tax liability due.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.